STATE OF MICHIGAN

COURT OF APPEALS

MIKE VAN AELST and TANIA VAN AELST,

Plaintiffs-Appellants,

v

ESTATES OF GENESEE VALLEY, LTD.,

Defendant-Appellee,

and

JOSEPH KUEHL,

Defendant.

UNPUBLISHED
July 24, 2007

No. 268870
Genesee Circuit Court
LC No. 05-081327-CP

Before: Meter, P.J., and Talbot and Owens, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the circuit court's order granting sanctions to defendant Estates of Genesee Valley, Ltd.,[1] based on plaintiffs' filing of a frivolous action. We affirm.

We review for clear error a trial court's award of sanctions for filing a frivolous action. *Lakeside Oakland Dev, LC v H & J Beef Co*, 249 Mich App 517, 532; 644 NW2d 765 (2002). A decision is clearly erroneous if, although there exists evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *Kitchen v Kitchen*, 465 Mich 654, 661-662; 641 NW2d 245 (2002). We review the amount of sanctions imposed for an abuse of discretion. *In re Costs & Attorney Fees*, 250 Mich App 89, 104; 645 NW2d 697 (2002).

MCR 2.114 provides, in pertinent part:

[1] Because defendant Joseph Kuehl is not a party to this appeal, all references to "defendant" in this opinion refer to Estates of Genesee Valley, Ltd. only.

> **(D) Effect of Signature.** The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that
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> * * *
>
> (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law . . . .
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> * * *
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> **(E) Sanctions for Violation.** If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. . . .
>
> **(F) Sanctions for Frivolous Claims and Defenses.** In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2).

MCR 2.625(A)(2) provides that "[i]n an action filed on or after October 1, 1986, if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591." MCL 600.2591 states, in relevant part:

> (1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.
>
> (2) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.
>
> (3) As used in this section:
>
> (a) "Frivolous" means that at least 1 of the following conditions is met:
>
> (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
>
> (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.

(iii) The party's legal position was devoid of arguable legal merit.

"Whether a claim is frivolous within the meaning of MCR 2.114(F) and MCL 600.2591 depends on the facts of the case." *Kitchen, supra* at 662.

Here, the trial court determined that sanctions were warranted because there had been no reasonable inquiry to determine whether a valid claim against defendant existed and the case against defendant should have been dismissed at an earlier point. The frivolous claims provisions set forth above impose an affirmative duty on an attorney "to conduct a reasonable inquiry into the factual and legal viability of a pleading before it is signed." *Attorney Gen v Harkins*, 257 Mich App 564, 576; 669 NW2d 296 (2003). The reasonableness of an inquiry is determined by an objective standard, and an attorney's subjective good faith is irrelevant. *Id.* "The focus is on the efforts taken to investigate a claim before filing suit, and a determination of reasonable inquiry depends on the facts and circumstances of the case." *Id.*

Plaintiffs argue that their attorney, Dennis H. Snyder, conducted a reasonable inquiry into the circumstances of the case before filing suit. In support of their argument, plaintiffs rely on plaintiff Mike Van Aelst's testimony at the sanctions hearing indicating that he believed, contrary to Steve Waterman's assertions, that Joseph Kuehl was defendant's agent, that both Kuehl and Waterman lied during their depositions, and that the mobile home was purchased from defendant, Waterman, and Kuehl. However, plaintiffs fail to address the other evidence, in existence before Snyder filed the complaint, which indicated that the relevant transaction was between plaintiff Tania Van Aelst and Kuehl only. The lease purchase agreement identified Tania as the lessee and Kuehl as the lessor, and the repair agreement indicated that Kuehl agreed to make certain repairs to the mobile home. In addition, in response to a letter from Snyder addressed to "Joe Kuehl, c/o Estates of Genesee Valley, Ltd.," Waterman indicated that Kuehl was neither an employee nor an agent of defendant. He also indicated that defendant never owned the mobile home at issue and that it had no interest in the home. Although Waterman provided a telephone number where he could be reached for further information, it is undisputed that Snyder never attempted to contact Waterman to verify these assertions. Rather, Snyder relied on Mike's supposition that Waterman was lying.

Snyder's actions did not constitute an objectively reasonable inquiry into the factual and legal viability of plaintiffs' claim. Notwithstanding that the claim was filed on behalf of both Mike and Tania even though Mike was not a party to the transaction, Snyder's failure to follow up with Waterman to determine whether his assertions were true was unreasonable considering that the lease and repair agreements did not obligate defendant in any way. Thus, the trial court did not clearly err in concluding that there was no reasonable inquiry to determine whether a valid claim existed against defendant and in imposing sanctions, which were mandatory under MCR 2.114. See MCR 2.114(E) ("[i]f a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, *shall* impose upon the person who signed it, a represented party, or both, an appropriate sanction") (emphasis added).

Plaintiffs argue that, even if sanctions were warranted, they and their attorney should not be subject to the harsh sanctions imposed. Although plaintiffs maintain that an evidentiary hearing was required to determine the appropriate amount of attorney fees, a hearing was not required because the trial court had sufficient evidence to determine the appropriate amount of attorney fees. See, e.g., *John J Fannon Co v Fannon Products, LLC*, 269 Mich App 162, 171;

712 NW2d 731 (2005). The trial court was intimately familiar with this case, considering the numerous hearings that had been held before the court on defendant's motions for both summary disposition and sanctions. Moreover, Snyder did not contest the reasonableness of defense counsel's time expended on this case, but instead only contested his hourly rate.

In *Wood v Detroit Automobile Inter-Ins Exch*, 413 Mich 573, 588; 321 NW2d 653 (1982), quoting *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973), our Supreme Court articulated the following nonexclusive list of factors for determining whether attorney fees are reasonable:

> "(1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client."

This Court has recognized, however, that "a trial court is not required to give detailed findings regarding each factor." *Fannon, supra* at 172.

Here, the trial court specifically looked to defense counsel's statement of fees and determined that the work performed by defense counsel was reasonable. The court also determined that, despite expert testimony indicating that defense counsel's $320 hourly fee was reasonable, the rate of $175 an hour was more appropriate considering the complexity of the issues involved, the area of law at issue, and the tasks completed to defend against the matter. Although defendant requested sanctions in excess of $57,734.55, the trial court imposed much lesser sanctions in the amount of $34,961.39. While this amount may be significant, we note that this Court has previously affirmed a sanctions award in the amount of $113,911.88. See *Fannon, supra* at 171-172. Moreover, and significantly, although plaintiffs argue in general that the amount of sanctions imposed was not reasonable, they do not specifically take issue with the $175 hourly rate that the trial court deemed appropriate or suggest an alternative hourly rate in their appellate brief.[2] Considering all the circumstances, we find no basis for reversal.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael J. Talbot
/s/ Donald S. Owens

[2] In addition, plaintiffs, as part of their appellate argument, cite a federal case that is not binding with respect to the issue before us.